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REEVES AMODIO, LLC

ORAL ARGUMENT REQUESTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

NORTHERN DYNASTY MINERALS LTD. and PEBBLE LIMITED PARTNERSHIP, Plaintiffs, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al., Defendants.	Case No. 3:24-cv-00059-SLG and consolidated cases

PLP'S STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Northern Dynasty Minerals Ltd. ("Northern Dynasty") and Pebble Limited Partnership ("Pebble Partnership") (collectively "PLP") ask the Court to vacate, as invalid, the actions of defendant the United States Environmental Protection Agency ("EPA") to block mining of the Pebble Deposit by vetoing issuance of Clean Water Act ("CWA") discharge permits for such mining operations across a broad swath of southwest Alaska.

2. PLP seeks relief under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 501 *et seq.*, from EPA's unprecedented Final Determination to veto discharges and discharge permits, purportedly under section 404(c) of the CWA, 33 U.S.C. §1344 ("Veto"), essentially prohibiting mining activities across a remote area of more than 200,000 acres in southwestern Alaska. EPA_AR_0082924; ECF No. 91.

I. Parties

3. Plaintiff Northern Dynasty is a Canadian company that is publicly traded on the Toronto Stock Exchange and the NYSE American exchange and headquartered in Vancouver, British Columbia. Northern Dynasty indirectly owns 100% of the Pebble Partnership and holds through subsidiaries the entire private interest in mineral rights located in the Pebble Deposit Area. Northern Dynasty's operations are focused on designing, permitting, building and operating the Pebble Project.

4. Plaintiff Pebble Partnership is an Alaska limited partnership based in Anchorage, Alaska. It has overseen a robust program of activities related to the Pebble Project in the areas of mineral exploration, engineering design and mine planning, environmental/socioeconomic studies, stakeholder relations, and public affairs.

5. Defendant EPA is an executive department of the U.S. government headquartered in the District of Columbia, and is the federal agency that took the unlawful and improper action that is a subject of the current motion for summary judgment.

II. The Statehood and Exchange Acts

6. When Alaska joined the Union, "99% of all land within Alaska's borders was owned by the Federal Government." *Hicklin v. Orbeck*, 437 U.S. 518, 528 n.11 (1978). Congress therefore set about providing Alaska a meaningful portion of land. Alaska Statehood Act, §6, Pub. L. 85-508, 72 Stat. 339 ("Statehood Act"). Congress did not specify the lands; under the Statehood Act, the State was allowed to select them from among areas that the government made available. Statehood Act §6.

7. To ensure the State was able to use the land for its highest economic use, and to promote the economic viability of the newly admitted state, the Statehood Act specified that "[a]ll grants made or confirmed under this Act shall include mineral deposits." *Id.* §6(i).

8. Alaska was to be given the authority to select lands under section 6 precisely because such lands are more economically useful and Alaska was thought to be economically non-viable without considerable support. *Sturgeon v. Frost*, 587 U.S. 28, 34 (2019). The fact that the lands contained underlying mineral rights was foundational to this plan. Statehood Act §6(i).

9. The Statehood Act also contained a forfeiture provision. If the State ever disposed of section 6 "lands or minerals" in a manner "contrary to the provisions" of section 6(i), such properties become "forfeited to the United States." Statehood Act §6(i). This restrictive clause did not sunset, unlike similar clauses in other statehood acts. *E.g.*, Pub. L. 59-

234, §8, 34 Stat. 267, 273 (June 16, 1906) ("Where any part of the lands granted by this Act to the State of Oklahoma are valuable for minerals … such lands shall not be sold by the said State prior to January first, nineteen hundred and fifteen; ….").

10. The process of land distribution took decades and several more acts by Congress to resolve. In the course of this land distribution, the federal government, the State, and a Native corporation (the Cook Inlet Region Inc. or "CIRI") found that each had something the other wanted in the area around Lake Clark and Bristol Bay. *Chickaloon-Moose Creek Native Ass'n, Inc. v. Norton*, 360 F.3d 972, 976 (9th Cir. 2004) (describing background and resolution).

11. Three-way negotiations resulted in an agreement embodied in Public Law 94-204, 89 Stat. 1145 ("Exchange Act"). Under this arrangement, Alaska was to receive certain lands which "shall be regarded for all purposes as if conveyed to the State under and pursuant to section 6 of the Alaska Statehood Act." Exchange Act §12(d)(1), 89 Stat. at 1153.

III. Description of Pebble Deposit

12. The closest settlements to the Deposit are Iliamna, Newhalen and Nondalton, which each about are seventeen miles away. EPA_AR_0082971.

13. The Deposit lies in the Lake and Peninsula Borough, which has approximately 23,782 square miles of land and a population density of approximately 0.06 persons per square mile, as of 2022. EPA_AR_0486752.

14. The Deposit sits at the headwaters of the North and South Forks of the Koktuli River ("NFK" and "SFK"), and of Upper Talarik Creek ("UTC"). EPA_AR_0082945. The former watercourses drain into the Mulchatna River, thus into the Nushagak, and ultimately

into Bristol Bay. EPA_AR_0091353. UTC drains into Iliamna Lake, which the Kvichak River drains into Bristol Bay. EPA_AR_009353.

15. The streams at the mine site are not traditionally navigable waters as designated by the U.S. Army Corps of Engineers ("USACE") or U.S. Coast Guard. EPA_AR_0094676 (Table of Navigable Waters of the US). The Final Environmental Impact Statement ("FEIS") published by USACE plainly states that "[t]he mine site is not accessible by navigable waters . . ." EPA_AR_0094675.

16. The SFK and NFK Rivers and UTC are not individually considered traditionally navigable by USACE or the US Coast Guard. See EPA_AR_0094676 (no individual listing of SFK and NFK or UTC). And while the FEIS states that "the closest 'navigable in fact' waterbody is the [SFK] River" since it may "have the possibility of being used . . . for commerce" (EPA_AR_0094673), a portion of the SFK "frequently exhibits zero or intermittent flows during winter and summer months" and "[d]ry or intermittent conditions were observed" in prior years. In some years, the duration of intermittent flows "persisted for multiple months in winter and early spring." EPA_AR_0095009. The streamflow characteristics in this river make it an unlikely candidate for traditional navigation.

17. The portions of the listed navigable waters in the FEIS do not stretch near the streams impacted by the mine site footprint. The UTC flows southeast for 39 miles and discharges into Iliamna Lake, a large inland lake located east and south of the mine site. Iliamna Lake is considered traditionally navigable and drains into the Kvichak River, which flows 50 miles downstream into Bristol Bay. EPA_AR_0094676. The Kvichak River itself is also considered traditionally navigable. *Id.* However, it is only considered traditionally navigable

from the "mouth to and including Iliamna Lake." *Id.* This would be south of Iliamna Lake and therefore outside the mine site footprint. The SFK and NFK Rivers also join southwest of the mine site to form the Koktuli River, which flows 39 miles downstream into the Mulchatna River. The Koktuli is not individually listed as traditionally navigable by USACE either. *Id.* The Mulchatna River flows 44 miles south and west before joining the Nushagak River. The Nushagak River flows an additional 109 miles before discharging into Bristol Bay. The Nushagak River is considered traditionally navigable under the USACE's list, but again, this is well-beyond the mine footprint and the Prohibition or Restriction Areas designed by EPA.

IV. .Mineral Discovery in Pebble Deposit

18. Drilling exploration of the Pebble Deposit began in the 1980s, first focusing on color anomalies visible from aircraft. EPA_AR_0099216.

19. Continued annual drilling until 1993 identified massive amounts of copper and ore. EPA_AR_0099216.

20. The exploratory program continued again in the early 2000s and by 2008 the Deposit was classified as one of the largest copper-gold porphyry systems in the world. EPA_AR_0099216.

21. The Deposit's measured and indicated resources are estimated to contain 53 billion pounds of copper, and it is among the world's largest undeveloped copper deposits. *See Pebble Project: NI 43-101 Technical Report Update and Preliminary Economic Assessment*, Ausenco (Aug. 21, 2023), https://northerndynastyminerals.com/site/assets/files/4984/pebble_

project_ni_43-101_technical_report_update_on_pea.pdf. Inferred copper resources are estimated at 23 billion pounds. *Id.*[1]

22. The Deposit also contains large amounts of other valuable minerals, including molybdenum, rhenium, gold and silver. *Id.*

V. US Needs for Pebble Deposit's Minerals

A. Copper

23. The transition to renewable energy requires critical minerals to capture and distribute renewables, and copper is necessary at every level of the electrical grid. EPA_AR_0486751.

24. Renewable energy systems may require five times more copper than conventional systems. EPA_AR_0486751.

25. Among other uses, copper is vital for micro grids, smart grids, energy storage, and electric vehicles. EPA_AR_0486748.

26. Copper is also used to collect, store, and distribute solar and wind energy. EPA_AR_0486748.

[1] The numbers used here for mineral quantities are based on PLP's current best information contained in the 2023 Preliminary Economic Assessment. These estimates may vary slightly from other resource estimates contained in the record, including from prior Preliminary Economic Assessments, because many factors may impact mineral resource estimates, including factors related to additional drilling and new studies as well as factors resulting in changes to the test for reasonable prospects for eventual economic extraction. *See* EPA_AR_0488443.

27. Forecasts show copper consumption would need to double between 2022 and 2035 if global net-zero carbon-dioxide emissions goals are to be met by 2050. EPA_AR_0488506.

28. Meanwhile, the International Energy Agency ("IEA") has concluded that copper demand in power lines alone would more than double by 2040, and overall copper demand would increase more than 40%. EPA_AR_0486748.

29. The same report concluded that current copper mines and projects would only meet 80% of copper needs by 2030. EPA_AR_0486748.

30. The price of copper reached a record high in 2024 and was expected to have averaged approximately 9% higher than in 2023. Ex. A U.S. Geological Surv., Mineral Commodity Summaries 65 (2025) (*Commodity Summaries*). In March 2025, copper was at another record-high, 8% higher than just one month earlier and a full 24% higher than in March 2024. Ex. H. U.S. Geological Surv., Mineral Industry Surveys: Copper in March 2025 (Sept. 2025).

31. This is attributed at least in part to expectations for reduced global copper supply in the future. *Id.*

32. The United States currently relies on importing 45% of its copper. Ex. A at 8.

33. The U.S. Geological Survey included copper as a critical mineral in its 2025 draft list of critical minerals. Ex. I, 90 Fed. Reg. 41591, 41592 (Aug. 26, 2025).

B. Molybdenum

34. Molybdenum is a component of steel alloys for which there is little suitable substitution, and it is expected to have strong demand in global power generation and infrastructure projects to prioritize clean energy. *Commodity Summaries* at 122-23.

35. Declining ore grades at porphyry copper mines have affected molybdenum production. *Commodity Summaries* at 123.

36. Several porphyry copper mines are expected to reach end-of-life in the next decade, which will further impact molybdenum supply. *Commodity Summaries* at 123.

C. Rhenium

37. Rhenium is a rare element with one of the highest melting points. *Commodity Summaries* at 146. As such, it is used primarily in high-temperature turbine engines. *Commodity Summaries* at 146.

38. Apparent rhenium consumption in the United States was 20% more in 2024 than in 2023, and the United States relied on imports for much of its rhenium supply. *Commodity Summaries* at 147.

VI. Pebble Deposit Mining Rights and Lease Terms

39. In 1984, the State of Alaska adopted the Bristol Bay Area Plan for State Lands. EPA_AR_0082977. This plan included "Mineral Closing Orders" or "MCOs" that prohibited new mineral development near certain anadromous streams. EPA_AR_0082977. None of the directly affected portions of NFK, SFK, or UTC is within an MCO. EPA_AR_0082977.

40. A previous company, Cominco Alaska Exploration ("CAE"), began investigating Pebble Deposit and filed its claims with the State in the 1980s. EPA_AR_0099216.

41. Northern Dynasty Minerals Ltd. optioned the property in 2001 and eventually, in 2005, acquired 100 percent of the private Pebble mining claims from Teck Cominco (the successor company to CAE's parent company). EPA_AR_0099216.

42. The project that PLP has proposed for mining the Deposit is expected to create over 6,000 jobs in Alaska (directly and indirectly) during the construction phase alone. EPA_AR_0486768.

43. The initial Capital Phase alone will support 12,569 jobs throughout the United States. EPA_AR_0486764.

44. PLP has promised to share profits through a "Pebble Performance Dividend" paid to residents in the nearby boroughs, which is forecasted to provide $2,100 to $7,700 per year to each individual resident. EPA_AR_0486763.

VII. Pre-permit Application Period

45. As early as 2004, USACE held various pre-permit application meetings, during which USACE confirmed that the mine would need a section 404(a) permit. EPA_AR_0082977.

46. From 2004 to 2008 PLP met repeatedly with federal and state agencies, including EPA, U.S. Fish and Wildlife Service, USACE, Alaska Department of Fish and Game, and Alaska Department of Natural Resources, among others, in a set of working groups to

assess what information would be useful for evaluating potential mining plans and making regulatory decisions about them. Shively Decl., ¶10; *see also* EPA_AR_0082977-0082978.

47. Also starting in 2004, Northern Dynasty commissioned numerous third-party detailed engineering and physical, biological, and socioeconomic baseline studies around the Deposit. EPA_AR_0099217.

48. Forty-four separate consulting firms and testing laboratories were selected to conduct studies "based on their specific expertise, Alaskan experience, and reputation in the scientific and regulatory communities." EPA_AR_0099217.

49. These studies were combined into the environmental baseline document ("EBD"), which was completed "to characterize the existing physical, chemical, biological, and social environments in the areas of the Bristol Bay and Cook Inlet regions where development and reclamation of the Pebble Project may occur." EPA_AR_0099215.

50. Each EBD chapter was written by the independent consultants selected to conduct studies. EPA_AR_0099218.

51. The EBD totaled over 20,000 pages long. EPA_AR_0099222. Supplements to the EBD included additional thousands of pages. *See generally*, EPA_AR_00126928- 0128385.

52. PLP made the EBD publicly available in 2011. *See generally* EPA_AR_0099213; Shively Decl., ¶9.

53. The EBD cost over $200 million to develop. Shively Declaration at ¶9.

54. Also during the pre-permit application period, EPA began considering a section 404(c) veto. *See, e.g.*, EPA_AR_0139142; EPA_AR_0078494-0078495 (summarizing early communications on the topic).

55. EPA also received external communications at least as early as 2010 requesting that EPA utilize its section 404(c) veto power. EPA_AR_0082977-0082978.

56. EPA included funding for the section 404(c) considerations in the Fiscal Year 2011 budget document. EPA_AR_0078502.

VIII. 2014 Proposed Veto

57. In advance of the 2014 proposed determination, EPA released an Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska ("BBA"). EPA_AR_0139804. The BBA was based on hypothetical mine scenarios, as PLP had not yet submitted an application. EPA_AR_00139839.

58. The State of Alaska and PLP had repeatedly objected to the process used to develop the BBA. *See, e.g.*, EPA_AR_0139114 (acknowledging that Alaska and PLP had raised concerns about the BBA); EPA_AR_0078507-0078523 (summarizing PLP's concerns with the BBA).

59. EPA selected outside consultants to review the first draft of the BBA. Those consultants criticized the draft on matters such as EPA choosing to assess hypothetical mine scenarios and failing to discuss mitigation practices. EPA_AR_0078509-EPA_AR_0078512.

60. On February 28, 2014, EPA sent a letter outlining its intent to proceed with section 404(c) veto considerations, despite PLP not having submitted an application. EPA_AR_0139142.

61. EPA filed its Proposed Determination to Restrict the Use of an Area as a Disposal Site; Pebble Deposit Area, Southwest Alaska ("2014 Proposal") on July 21, 2014. EPA_AR_0139111.

62. EPA acknowledged in the 2014 Proposal that PLP and the State of Alaska had submitted information raising scientific and technical issues during the BBA period and prior to publication of the 2014 Proposal. EPA_AR_0139114.

63. EPA nonetheless relied heavily on the BBA in its 2014 Proposal. *See generally* EPA_AR_0139111.

IX. 2014 FACA Litigation

64. PLP initiated litigation against EPA on September 3, 2014, alleging violation of the Federal Advisory Committee Act ("FACA") and the Administrative Procedure Act ("APA"). EPA_AR_0078537; *Pebble Ltd. P'ship v. U.S. Env't Prot. Agency*, No. 3:14-cv-00171, ECF No. 1 (D. Alaska).

65. PLP alleged that EPA formed three Federal Advisory Committees consisting of individuals and groups opposed to mining the Pebble Deposit and assisted EPA in its section 404(c) proceedings. *Id.*, Amended Compl., ECF No. 133, ¶¶2-4.

66. In its complaint and motion for preliminary injunction, PLP alleged that EPA coordinated with these *de facto* advisory committees, which consisted of mine opponents, through frequent private meetings and briefings to improperly strategize the section 404(c) proceedings and to develop the BBA as a vehicle of support for EPA's veto determination. *Id.*, ECF No. 7 at 8-16; *see also id.*, ECF No. 133.

67. The U.S. District Court for the District of Alaska granted PLP's motion for preliminary injunction following oral arguments and its review of the briefing, affidavits, and "twenty-three three-ring binders of plaintiff's exhibits." *Id.*, ECF No. 90 at 1.

68. In particular, the court focused on what was termed the "Anti-Mine Assessment Team" advisory committee, which PLP alleged in part consisted of non-government employees working for the EPA Bristol Bay Assessment Team. *Id.* at 1-2; *id.*, ECF No. 7 at 15. As alleged in PLP's filings, this team helped develop the Bristol Bay Watershed Assessment ("BBA"), contributing to and drafting the assessment and supporting appendices. *Id.*, ECF No. 7 at 15. The court found that PLP would suffer irreparable harm if EPA proceeded with section 404(c) proceedings in light of the potential FACA violations. *Id.*, ECF No. 90 at 2.

69. In May 2017, the parties ultimately settled that case, allowing PLP to pursue a CWA permit application notwithstanding the existence of EPA's proposed veto. EPA_AR_0139592-0139593.

70. The settlement agreement also required EPA to "initiate a process to propose to withdraw the Proposed Determination." EPA_AR_0139594.

71. EPA ultimately withdrew its 2014 Proposal in August 2019. EPA_AR_0139126.

72. Among other reasons, EPA acknowledged that PLP's actual mine plan was quite different from what EPA had anticipated, so that the information in the 2014 Proposal "ha[d] effectively grown stale." EPA_AR_0139130.

X. Permit application

73. On December 22, 2017, PLP submitted its CWA permit application, for various discharges in building and operating the Pebble mine and to build port facilities to handle the output and inbound supplies. EPA_AR_0084333.

74. PLP's plan submitted to USACE for permitting was designed to minimize environmental impacts, as demonstrated by examples such as:

a. Reducing the footprint of the open mining print, TSF, and mine facilities, EPA_AR_0084375;

b. Consolidating infrastructure to avoid placement of waste or tailings in the UTC drainage, *id.*;

c. Segregating pyritic tailings and including a fully lined facility for pyritic tailings to minimize water quality impacts and facilitate closure, *id.*

75. The project design included myriad other features designed to minimize environmental impacts. *E.g.*, EPA_AR_0087356-0087372.

76. PLP's permit application also included a table of the total surface area in acres of wetlands or other waters to be filled ("Wetlands Table"). EPA_AR_0084369.

77. The Wetlands Table was prepared using the National Wetlands Inventory ("NWI"). Ex. B. USACE and EPA relied on the NWI in their evaluation of PLP's permit application.

78. During the application review period, the Corps issued over 160 Requests for Information ("RFIs"), to which PLP provided extensive responses. *See, e.g.*, EPA_AR_0135291 (RFI 161 response).

79. In response to feedback, PLP revised its initial proposal, ending with a 2020 mine plan ("2020 Plan"). EPA_AR_0499508.

80. Among other features, the 2020 Plan incorporates the following concepts to minimize environmental impacts:

a. Eliminates placing waste rock or tailings in certain areas such as UTC, EPA_AR_0499516;

b. Foregoes the use of a closed-loop system using cyanide-extraction for gold, *id.*

c. Segregates pyritic tailings—those that may contain potentially acid-generating or metal-leaching materials, *see* EPA_AR_0093776—to be stored in the pit at mine closure, while the vast majority of tailings would be non-acid-generating materials in a bulk TSF specially designed to prevent failure, EPA_AR_0087359;

d. Incorporates leak-detecting and automatic shut-off systems for gas, concentrate, and return water pipes, EPA_AR_0087364; and

e. Avoids wetlands to the "maximum extent feasible," EPA_AR_0087359.

81. The project design included myriad other features designed to minimize environmental impacts. *E.g.*, EPA_AR_0087356–0087372.

82. EPA later stated that the 2020 Plan was expected to result in the loss of 8.5 miles of salmon habitat (out of 9,816 documented miles of salmon streams in the Bristol Bay Watershed, EPA_AR_0095991) and 91 miles of streams not used by salmon; the loss of 2,108 acres of wetlands; and certain flow changes in the NFK and SFK. EPA_AR_0082954-EPA_AR_0082955.

83. The 8.5 miles of salmon habitat are in two small tributaries identified as "high gradient channels less conducive to spawning." EPA_AR_0092567.

XI. NEPA Analysis

84. USACE completed a comprehensive environmental analysis under the National Environmental Policy Act ("NEPA"). EPA_AR_0088061-0091271.

85. In February 2019, USACE provided a draft environmental impact statement ("DEIS") for public comment and coordinated with tribal governments and other cooperating agencies. EPA_AR_0088061-0088141.

86. EPA, as a cooperating agency, participated in drafting the DEIS and providing feedback. EPA_AR_0088067.

87. The DEIS assessed minimal or limited impacts from the proposal. *See generally* EPA_AR_0088091- 0088140.

88. A "3(b)" letter is required, under the memorandum of understanding by which EPA and USACE coordinate their activities under section 404, before EPA initiates a potential 404(c) veto. EPA_AR_0141382. The record does not contain any such letter about Pebble during USACE's consideration of the Application, and it appears EPA did not send the letter.

89. USACE then published the FEIS in July 2020. EPA_AR_0091272.

90. Over 5,300 pages long, the document was extensive and comprehensive. EPA_AR_0091272-EPA_AR_0096546.

91. Contained within the FEIS were updates to the application designed "to optimize project design to avoid and minimize impacts … address public comments … and additional data to fill gaps." EPA_AR_0091279.

92. The FEIS concluded that such changes had "further reduced project impacts." EPA_AR_0091389.

93. The FEIS included, but was not limited, to the following assessments and discussion:

a. "The loss of habitat is not expected to have a measurable impact on fish populations based on physical habitat characteristics and fish density estimates in the affected reaches." EPA_AR_0095946;

b. "[M]any headwater streams in the mine site area have gradients greater than 3 percent, which are generally less productive for anadromous salmonids," EPA_AR_0094989;

c. Approximately 27 salmon spawn in the salmon streams to be blocked under the 2020 Plan, EPA_AR_0095018; EPA_AR_0092618;

d. Impacted salmon streams are low-quality habitat with low-density salmon populations, EPA_AR_0092618-0092620;

e. Only approximately 2 anglers per year return harvest surveys indicating they fish anywhere on the Koktuli River, EPA_AR_0094584;

f. "Given the breadth and diversity of habitat (and salmon populations) in the Bristol Bay watershed," "[n]o long-term measurable changes in the number of returning salmon are expected" from the 2020 Plan, "nor is genetic diversity expected to change" so that "the impact to the Portfolio Effect would not be discernable," EPA_AR_0095992; EPA_AR_0091990;

g. "[T]he Portfolio Effect may help to minimize expected impacts of the mine development on Bristol Bay's salmon fishery," EPA_AR_0091990;

h. Using a detailed model based on streams and salmon measurements, the FEIS found streamflow changes would be acceptable, EPA_AR_0093662-EPA_AR_0093663;

i. Salmon habitat would increase throughout the NFK and SFK, EPA_AR_0093662-093664;

j. The design for the bulk TSF would minimize surface water storage and reduce the amount of fluid introduced into the TSF, thereby differing from historic and current TSFs that have experienced failures, EPA_AR_0093776;

k. The TSF has at most a "very remote" chance of any failure, EPA_AR_0093787.

XII. Compensatory Mitigation Plans

94. In addition to the above coordination, planning, and NEPA analysis, PLP also submitted multiple compensatory mitigation plan ("CMP") drafts. PLP submitted its first draft CMP framework on November 21, 2018. EPA_AR_0129366.

95. This first CMP focused on opportunities that benefit water quality and enhance or restore fish habitat through off-site, out-of-kind mitigation, since PLP and USACE had recognized that on-site and in-kind compensatory mitigation was not practical. EPA_AR_0129366.

96. Water Quality Improvement projects, invasive species eradication and similar activities were included in the first CMP. EPA_AR_0129367. Fish habitat restoration

activities in neighboring watersheds were also identified, in addition to off-site wetlands mitigation. EPA_AR_0129367.

97. PLP continued to refine its mitigation proposals through early 2020. EPA_AR_0129367-0129369.

98. In January 2020, PLP submitted a revised draft CMP developed in response to USACE guidance and precedent. EPA_AR_00133694.

99. The January 2020 draft CMP planned to restore 857 acres of temporarily impacted wetlands post-construction. EPA_AR_0133725.

100. The January 2020 CMP again focused on off-site opportunities to benefit anadromous streams and water quality in the larger watersheds associated with the project. EPA_AR_0133725.

101. PLP's January 2020 draft CMP proposed a combination of three permittee-responsible mitigation plans including wastewater facility improvement projects in Kokhanok, Newhalen, and Nondalton, rehabilitating 8.5 miles of fish habitat from repair of fish passage barriers, and cleanup of marine debris in 7.4 miles of coastal habitats in Kamishak. EPA_AR_0133725-0133726.

102. In late August 2020, just one month after the above-discussed positive FEIS assessment was published, USACE informed PLP that in-kind compensatory mitigation within the Koktuli River watershed would be required and directed PLP to revise its CMP again. EPA_AR_0130430.

103. PLP submitted a sixth revised CMP in November 2020. EPA_AR_0130904.

104. PLP's last-submitted CMP included establishment of a 112,445-acre conservation area in the Koktuli River. EPA_AR_130906.

105. The conservation area selected for PLP's preservation mitigation was chosen due to USACE's direction that "in-kind compensatory mitigation within the Koktuli River watershed will be required to compensate for all direct and indirect impacts caused by discharges into aquatic resources at the mine site." EPA_AR_0130906 (quoting Aug. 20, 2020 USACE letter).

XIII. Record of Determination

106. The revised CMP prepared at the direction of USACE was 129 pages long. EPA_AR_00130904-0131004.

107. However, USACE issued a Record of Determination ("ROD") just four days after PLP submitted its revised CMP. EPA_AR_0129269-0129297.

108. The ROD identified that the 2020 Plan would not affect the Bristol Bay commercial fishery. EPA_AR_0128981.

109. The ROD also stated at the "regional level," impacts would be "negligible." EPA_AR_0128981.

110. However, the ROD denied PLP's CWA permit application. EPA_AR_0129269 0129297.On January 19, 2021, PLP appealed USACE's permit denial through USACE's ordinary processes. EPA_AR_0129359-019450

XIV. 2023 Final Veto

111. While the USACE appeal was pending, EPA proposed to veto the 2020 Plan. EPA_AR_0000041-0000044.

112. PLP commented that EPA's proposed 2023 veto would block all mining of the Deposit, given that it "identified the broadest possible area where mining activity could occur at the Pebble Deposit" in order "to preclude such an operation." EPA_AR_0078414.

113. EPA's Final Determination ("Veto") was published in February 2023. EPA_AR_0082924.

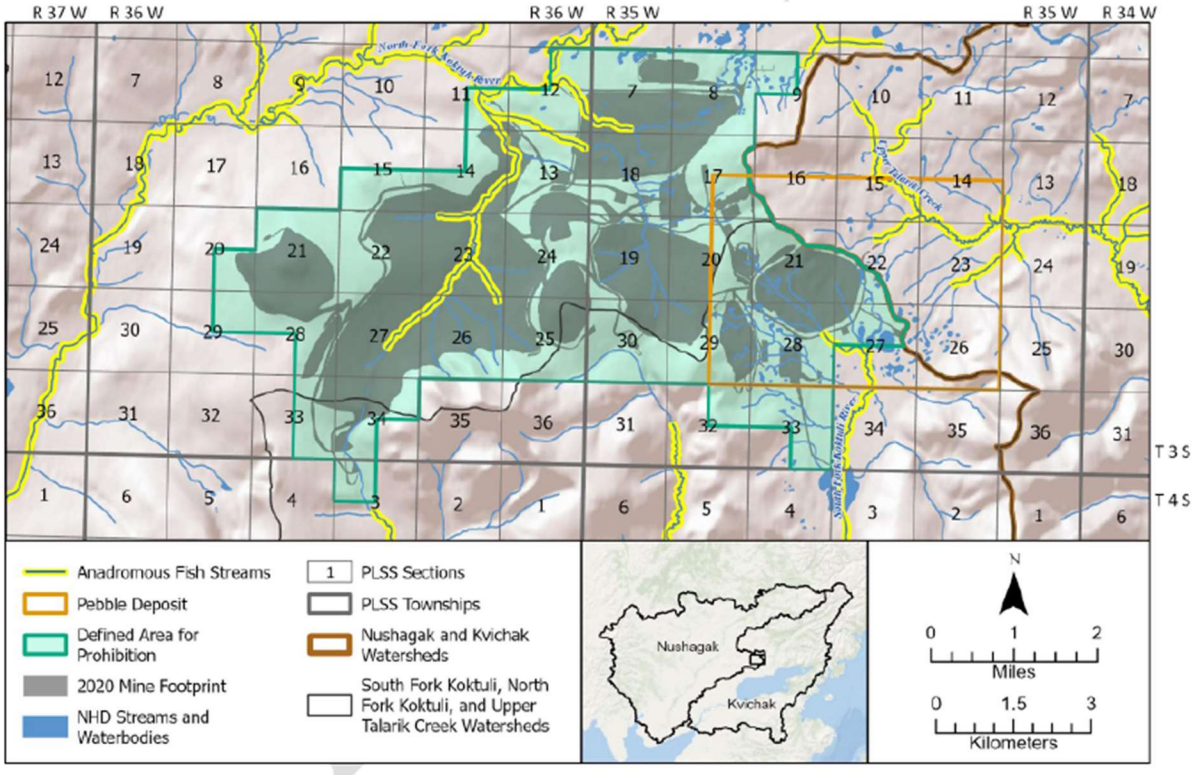
114. EPA again relied on the BBA throughout the Veto. *E.g.*, EPA_AR_0082951, EPA_AR_0083109, EPA_AR_0083191, EPA_AR_0083194.

115. EPA also asserted it was not required to consider mitigation when determining unacceptable adverse effects, EPA_AR_0083157; that the CMP "[did] not qualify as compensatory mitigation under the regulations," EPA_AR_0083163; and that it was not required to balance environmental benefits against non-environmental costs, EPA_AR_0083165.

116. The Veto prohibits the issuance of a permit, within a 25-square-mile area ("Prohibition Area"), for discharges associated with the 2020 Plan or any comparable mine. EPA_AR_0082957-0082961.

117. The Prohibition Area completely encompasses the mine's footprint and approximately half the Pebble Deposit. EPA_AR_0083170.

Figure 5-1. The Defined Area for Prohibition. Figure based on information from PLP (2020b), USGS (2021a), and USGS (2021b).



118. The Mine's proposed footprint and the Prohibition Area are almost fully enclosed within two townships, S3SR35W and S3SR36W, the former of which also contains the approximate measure of the Pebble Deposit. *Id.* (excerpted below).

119. S3SR35W, was conveyed "pursuant to Section 6(b) of the Alaska Statehood Act." Ex. C; *see also supra*, Section II (describing the Statehood Act).

120. S3SR36W, was conveyed "pursuant to Section 6(b) of the Alaska Statehood Act" "as modified by" by the Exchange Act. Ex. D.

121. The Mine footprint and Prohibition Area also includes a very small portion of township S4SR36W, the upper-left quarter of Section 3. EPA_AR_0083170.

122. S4SR36W was also conveyed under the Statehood Act "as modified" by the Exchange Act. Ex. E.

123. The Veto also "restricts" any discharge, for the 2020 Plan or any comparable mine, across a 309-square-mile area ("Restriction Area"). EPA_AR_0082958, EPA_AR_0082960.

124. EPA's Veto covers the 2020 Plan and any mining of the Deposit that causes any one of the impacts described in the Determination. EPA_AR_0082957-EPA_AR_0082958.

125. The Veto instructed future potential mine operators to seek EPA's feedback on whether their projects have the restricted effects. EPA_AR_0083177-EPA_AR_0083178.

126. Regarding impacts to wetlands, EPA's veto was based on the conclusion that the 2020 Plan "would result in the discharge of dredged or fill material into [WOTUS], including ... wetlands." EPA_AR_0082954.

127. As noted above, *supra* ¶¶ 76-77, PLP's permit application included a Wetlands Table of the total surface area in acres of wetlands or other waters to be filled.

128. The total acres of wetlands included in the Wetlands Table was 2,162.53 acres. EPA_AR_0087350. The following table provides, for each category in the Wetlands Table, the description for the corresponding category under the NWI.

NWI Code	**Acres from Wetlands Table**	**NWI description (class/ subclass + hydrology)**
PEM1/ML1B	17.59	Palustrine Emergent Persistent (1) with Moss-Lichen (ML1); Saturated (B). Seasonally saturated; unsaturated conditions prevail by the end of the season; surface water typically absent.
PEM1/ML1C	8.19	Palustrine Emergent Persistent with Moss-Lichen (ML1); Seasonally Flooded (C). Surface water is present for extended periods especially early in the growing season, but is absent by

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PEM1/SS1B	112.88	Palustrine Emergent Persistent / Scrub-Shrub; Seasonally saturated (B) (substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season). Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PEM1/SS1C	30.49	Palustrine Emergent Persistent / Scrub-Shrub; Seasonally Flooded (C). Floods part of growing season; The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PEM1A	3.31	Palustrine Emergent Persistent; Temporarily Flooded (A). Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for the most of the season.
PEM1B	247.96	Palustrine Emergent Persistent; Seasonally saturated (B). The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PEM1Bb	0.18	Palustrine Emergent Persistent; Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PEM1C	148.23	Palustrine Emergent Persistent; Seasonally Flooded (C). Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.; Beaver modified.
PEM1Cb	2.57	Palustrine Emergent Persistent; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS1/3C	0.66	Palustrine Scrub-Shrub: Broad-leaved Deciduous / Broad-leaved Evergreen; Seasonally Flooded (C). Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS1/EM1A	5.37	Palustrine Scrub-Shrub & Emergent Persistent; Temporarily Flooded (A). Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS1/EM1B	598.18	Palustrine Scrub-Shrub & Emergent Persistent; Seasonally saturated. The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PSS1/1Bb	1.38	Palustrine Scrub-Shrub Deciduous / Deciduous; Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff; Beaver-modified (b).
PSS1/EM1C	100.65	Palustrine Scrub-Shrub & Emergent Persistent; Seasonally Flooded (C). Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS1/EM1Cb	2.1	Palustrine Scrub-Shrub & Emergent Persistent; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface; Beaver-modified (b).
PSS1/ML1B	9.66	Palustrine Scrub-Shrub (deciduous) with Moss-Lichen (ML1); Seasonally saturated (B). The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PSS1A	15.96	Palustrine Scrub-Shrub (deciduous); Temporarily Flooded (A). Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground.
PSS1Ab	0.03	Palustrine Scrub-Shrub (deciduous); Temporarily Flooded (A); Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground; Beaver-modified (b).
PSS1B	637.15	Palustrine Scrub-Shrub (deciduous); Seasonally saturated (B). The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PSS1Bb	0.25	Palustrine Scrub-Shrub (deciduous); Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff; Beaver-modified (b).
PSS1C	58.89	Palustrine Scrub-Shrub (deciduous); Seasonally Flooded (C). Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS1Cb	1.31	Palustrine Scrub-Shrub; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface; Beaver-modified (b).
PSS3/1B	3.24	Palustrine Scrub-Shrub: Broad-leaved Evergreen (3) / Broad-leaved Deciduous (1); Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PSS3/1C	0.26	Palustrine Scrub-Shrub: Broad-leaved Evergreen / Broad-leaved Deciduous; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS3/EM1B	0.24	Palustrine Scrub-Shrub (evergreen) / Emergent Persistent; Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PSS3/EM1C	5.67	Palustrine Scrub-Shrub (evergreen) / Emergent Persistent; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS3/USC	0.37	Palustrine Scrub-Shrub (evergreen) / Unconsolidated Shore; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
PSS3B	0.89	Palustrine Scrub-Shrub (evergreen); Seasonally saturated (B); The substrate is saturated at or near the surface for extended

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PUSA	0.23	Palustrine Unconsolidated Shore; Temporarily Flooded (A). Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for the most of the season.
PUSC	10.35	Palustrine Unconsolidated Shore; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
R4SBC	3.81	Riverine Intermittent (R4) — The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.
PEM1/ML1Cb	0.88	Palustrine Emergent Persistent /ML1; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface; Beaver-modified (b).
PEM1/SS1A	2.82	Palustrine Emergent Persistent / Scrub-Shrub Broad-leaved Deciduous (SS1); Temporarily Flooded; Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for the most of the season.
PSS1/3B	8.35	Palustrine Scrub-Shrub: Broad-leaved Deciduous (1) / Broad-leaved Evergreen (3); Seasonally saturated (B). The substrate is saturated at or near the surface for extended

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PEM1/ML1Cb	0.88	Palustrine Emergent Persistent /ML1; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface; Beaver-modified (b).
PEM1/SS1A	2.82	Palustrine Emergent Persistent / Scrub-Shrub Broad-leaved Deciduous (SS1); Temporary Flooded; Surface water is present for brief periods (from a few days to a few weeks) during the growing season, but the water table usually lies well below the ground surface for the most of the season.
PSS1/3B	8.35	Palustrine Scrub-Shrub: Broad-leaved Deciduous (1) / Broad-leaved Evergreen (3); Seasonally saturated (B); The substrate is saturated at or near the surface for extended periods during the growing season, but unsaturated conditions prevail by the end of the season in most years. Surface water is typically absent, but may occur for a few days after heavy rain and upland runoff.
PABH	2.13	Palustrine Aquatic Bed (AB); Permanently Flooded (H). Water covers the substrate throughout the year in all years.
PEM1/2F	0.3	Palustrine Emergent: Persistent (1) / Nonpersistent (2); Semi-permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.
PEM1F	18.34	Palustrine Emergent Persistent; Semi permanently Flooded (F). Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.
PEM1Fb	0.77	Palustrine Emergent Persistent; Semi permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface; Beaver-modified (b).

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
PEM2F	0.95	Palustrine Emergent Nonpersistent (annuals); Semi permanently Flooded (F). Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.
PEM2Fb	0.78	Palustrine Emergent Nonpersistent; Semi-permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface; Beaver-modified (b).
PSS1/EM1F	3.98	Palustrine Scrub-Shrub & Emergent Persistent; Semi-permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface. Shrub marsh with long-duration water.
PSS1/EM1Fb	0.27	Palustrine Scrub-Shrub & Emergent Persistent; Semi-permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface; Beaver-modified (b).
PUBF	1.59	Palustrine Unconsolidated Bottom; Semi permanently Flooded (F); Surface water persists throughout the growing season in most years. When surface water is absent, the water table is usually at or very near the land surface.
PUBH	39.29	Palustrine Unconsolidated Bottom; Permanently Flooded (H); Water covers the substrate throughout the year in all years.
PUBHb	7.5	Palustrine Unconsolidated Bottom; Permanently Flooded (H); Water covers the substrate throughout the year in all years; Beaver-modified (b).
PUS/EM1C	0.28	Palustrine Unconsolidated Shore / Emergent Persistent; Seasonally Flooded (C); Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.
R3UBF	0.08	Riverine Upper Perennial (R3) — Unconsolidated Bottom; Semi-permanently Flooded (F). The Riverine System includes all wetlands and deepwater habitats contained within a

NWI Code	Acres from Wetlands Table	NWI description (class/ subclass + hydrology)
		channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.
R3UBH	44.09	Riverine Upper Perennial (R3) — Unconsolidated Bottom; Permanently Flooded (H). Perennial channel with year-round flow. The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water.
R3UBHb	0.1	Riverine Upper Perennial (R3) — Unconsolidated Bottom; Permanently Flooded (H); The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water; Beaver-modified (b).
R3USC	1.6	Riverine Upper Perennial (R3) — Unconsolidated Shore; Seasonally Flooded (C); The Riverine System includes all wetlands and deepwater habitats contained within a channel, with two exceptions: (1) wetlands dominated by trees, shrubs, persistent emergents, emergent mosses, or lichens, and (2) habitats with water containing ocean-derived salts of 0.5 ppt or greater. A channel is an open conduit either naturally or artificially created which periodically or continuously contains moving water, or which forms a connecting link between two bodies of standing water. Banks/bars of perennial river that flood seasonally.

129. According to the coding in the NWI and the Wetlands Table in the administrative record, of the 2,162.53 acres of wetlands included in the Wetlands Table, 2,041.86 acres are saturated rather than flooded, or are flooded only seasonally or temporarily. Those areas would not qualify as WOTUS.

XV. Administrative Appeal

130. Meanwhile, in the administrative appeal, the Review Officer remanded the denial decision to correct multiple serious errors. Ex. F, Administrative Appeal Decision, Clean Water Act, POA-2017-00271 (Alaska Dist. Apr. 24, 2023) (*Administrative Appeal Decision*).

131. Among other findings, the Review Officer found that:

a. Rejecting the Appellant's CMP was contrary to Corps regulations and guidance given the District did not "provide complete and detailed comments" or allow PLP "sufficient time to address those comments prior to finalizing a revised mitigation plan review," *Administrative Appeal Decision* at 27-31;

b. Some of the alleged CMP deficiencies were not supported by the record, *Administrative Appeal Decision* at 31-38;

c. Some asserted mitigation requirements were contrary to Corps rules, *id.* at 39;

d. It was irrational to reject the Application for "damages to fisheries," after the FEIS found there would be no such damage, *Administrative Appeal Decision* at 66-67;

e. PLP's plans would not alter salmon population genetics due to a "portfolio effect," *Administrative Appeal Decision* at 65-66; and

f. Invoking the possibility of TSF failure was unreasonable in light of findings that such an event was not reasonably foreseeable, *id.* at 65.

XVI. USACE Remand

132. In April 2024, on remand, the Corps failed to address any of the Hearing Officer's findings, instead insisting on remand that EPA's Final Determination vetoing discharges near the Pebble deposit mandated denial. Ex. G, Department of the Army, POA-2017-00271 RECORD OF DECISION, Review of the Application by Pebble Limited Partnership (POA-2017-0271) in light of the prohibitions and restrictions imposed by the Final determination of the EPA.

October 3, 2025

Respectfully submitted,

/s/ Keith Bradley

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2025, I filed a true and correct copy of the foregoing document with the Clerk of the Court for the United States District Court of Alaska by using the CM/ECF system. Participants in this Case No. 3:24-cv-00059-SLG who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Keith Bradley
Keith Bradley